

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

EUGENE A. TODIE,

Plaintiff,

vs.

E. SOKOLOWSKI,

Defendant.

Case No. 2:12-cv-00335-GMN-PAL

**REPORT OF FINDINGS AND**  
**RECOMMENDATION**

This matter is before the court on Plaintiff's failure to comply with the court's Order to Show Cause (Dkt. #11) entered February 12, 2013.

Plaintiff is proceeding in this action pro se. On May 9, 2012, the court entered an Order (Dkt. #2) granting Plaintiff's Application to Proceed In Forma Pauperis (Dkt. #1). The court screened Plaintiff's Complaint (Dkt. #4) pursuant to 28 U.S.C. § 1915A and allowed counts two and three to proceed and dismissed count one with leave to amend. *See* Order (Dkt. #2). The Order directed the Clerk to file the Complaint (Dkt. #4) but withheld directing service until after the amended complaint deadline passed. *Id.* Plaintiff did not file an amended complaint. On June 22, 2012, the court entered an Order (Dkt. #5) clarifying the claims remaining in this case and directing the Clerk of the Court to issue summons for Defendant. *See* Order (Dkt. #5) at 5:18-19. The Order directed the Clerk to deliver the Summons (Dkt. #6) and Complaint to the U.S. Marshal's Service ("USMS") for service and four USM-285 forms to Plaintiff. Plaintiff was directed to furnish the completed USM-285 forms to the USMS. Additionally, within twenty days of receiving a copy of the USM-285 form showing whether service was accomplished, Plaintiff was required to file a notice with the court identifying whether Defendant was served. Plaintiff has not done so.

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1 Rule 4(m) of the Federal Rules of Civil Procedure requires that service of a complaint and  
2 summons be made within 120 days of filing a complaint. If service of summons and complaint is not  
3 made in that time, the Rule provides that:

4 the court, upon motion or on its own initiative after notice to the plaintiff,  
5 shall dismiss the action without prejudice as to that defendant or direct that  
6 service be effected within a specified time; provided that if the plaintiff  
shows good cause for the failure, the court shall extend the time for service  
for an appropriate period.

7 Fed. R. Civ. P. 4(m). Although Plaintiff's Complaint was filed on May 9, 2012, the court withheld  
8 allowing service until after the amended complaint deadline had run, and on June 22, 2012, the court  
9 directed service of the Complaint. The court will calculate the Rule 4(m) deadline from June 22, 2012.  
10 Thus, service of process was required to be made no later than October 22, 2012. Plaintiff was also  
11 required, pursuant to Rule 4, to file proof of service. Fed. R. Civ. P. 4(l). Plaintiff has not filed proof  
12 of service nor has he requested additional time to serve process on Defendant Sokolowski as set forth in  
13 the court's Order directing service. *See* Order (Dkt. #5) at 5:25-6:2.

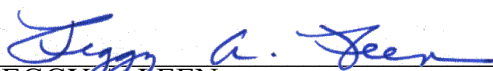
14 On February 12, 2013, the court entered an Order to Show Cause (Dkt. #11) directing Plaintiff  
15 to show cause why his Complaint should not be dismissed for failure to serve process pursuant to Rule  
16 4(m) of the Federal Rules of Civil Procedure and for failure to prosecute. Plaintiff was warned that  
17 failure to comply with the Order to Show Cause would result in a recommendation that Plaintiff's  
18 Complaint be dismissed. Plaintiff did not respond to the Order to Show Cause or request additional  
19 time to respond.

20 Plaintiff has failed to timely serve the complaint, comply with the court's order and Order to  
21 Show Cause. The complaint has been on file for 10 months with no effort to prosecute it.

22 Accordingly,

23 **IT IS RECOMMENDED** that Plaintiff's Complaint be DISMISSED.

24 Dated this 18th day of March, 2013.

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PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE

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**NOTICE**

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and recommendations of a magistrate judge shall file and serve *specific written objections* together with points and authorities in support of those objections, within fourteen days of the date of service of the findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s Order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject to the page limitations found in LR 7-4.